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September 18, 2009

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445-12th Street SW, Room TWB 204
Washington, D.C. 20554

Re: Ex Parte Submission in WC Docket No. 09-82

Dear Ms. Dortch:

Today Douglas J. Minster, Vice President and General Counsel, Atlantic Tele-Network, Inc. ("ATN"); Bill Kreisher, Executive Vice President for corporate development, ATN; and Robert J. Aamoth and Joan M. Griffin, attorneys for ATN, met with Nick Alexander and Cody Williams in Commissioner McDowell's office to discuss the Consolidated Applications filed in the above-referenced docket seeking the Commission's approval to transfer certain licenses and authorizations held by or on behalf of Innovative Communications Corporation ("ICC") to the National Rural Utilities Cooperative Finance Corporation ("CFC"). The points raised by Mr. Minster, Mr. Kreisher, Mr. Aamoth, and Ms. Griffin on behalf of ATN are summarized in the attached document.

In addition, per the request of Mr. Alexander, ATN is submitting for inclusion in the docket a copy of the transcript of the April 6, 2009 hearing in *In Re Innovative Communications Company, LLC*, Case No. 06-30008(JKF), Dist. Ct. of V.I., Bankr. Division, as referenced in ATN's August 28, 2009 *ex parte* filing at n. 7.

Please contact the undersigned counsel if you have any questions regarding this matter.

KELLEY DRYE & WARREN LLP

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Sincerely,

A handwritten signature in black ink, appearing to read "Joan M. Griffin". The signature is fluid and cursive, with the first name "Joan" being more prominent.

Joan M. Griffin

cc: Nick Alexander
Cody Williams

Atlantic Tele-Network, Inc.
Ex Parte Submission in WC Docket No. 09-82
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- Virgin Islanders have been denied entry into the Broadband Era.
 - Vitelco's expert: only 36% of USVI households subscribe to residential broadband service; the few available services are excessively priced and of poor quality.
 - Vitelco's expert: wireline network is "seriously outdated" and in a "state of significant disrepair."
 - CFC intends to function as a mere caretaker of the ICC assets until it can re-market them in a year or two, so it will have no incentive to undertake the investments necessary to establish a true broadband infrastructure in the USVI.
 - CFC contends intermodal competition between ILECs and cable TV operators in rural markets is infeasible, which is not the case – witness Guam (ILEC and cable TV operator are separately owned, and Guam has a 45% broadband penetration rate).
- Grant of the Consolidated Applications simply perpetuates the status quo.
 - Today there is no competition between the ILEC (Vitelco) and the dominant (90% market share) cable TV provider (Innovative Cable) because both are owned by ICC.
 - Grant of the Consolidated Applications will mean one entity will continue to own Vitelco and Innovative Cable and operate them as a unit, only now the entity will be CFC.
 - Same entity will also own and control nearly 100MHz mobile wireless spectrum and the largest long distance carrier.
 - Thus, the USVI market will still lack a competitive impetus for upgrading facilities or providing new and enhanced services to customers.
 - *Section 706 Second Report* demonstrates that the presence of additional competitors accelerates deployment of advanced services, increases breadth and quality of services, and lowers prices.
- Solution: condition grant on divestiture of cable TV business or wireline business post-close.
 - Divest *either* Vitelco *or* Innovative Cable – we don't care; let CFC choose, but business divested must be fully functional as a stand-alone business on day 1, and divestiture must be completed within one (1) year of close.
- Imposing a divestiture condition would not create a conflict with the Bankruptcy Court or perpetuate the bankruptcy proceedings.
 - The Bankruptcy Court issued only an interim order pursuant to a two-step process so that the FCC could fully review the proposed transaction.

- The Bankruptcy Court expressly limited its initial inquiry to determining what is in the best financial interests of the creditors (*i.e.*, RTFC); the Bankruptcy Court did not consider any other issues, including national broadband and telecommunications policy issues.
- Issuing an order granting CFC's applications will not "end" the bankruptcy process or remove uncertainty. Publicly available evidence shows that CFC intends to flip the ICC assets over the next year or two and thus effectively prolong whatever uncertainty has been caused by the bankruptcy process.
- The FCC's role is not that of a rubber stamp; precedent confirms that the FCC is authorized to, and must, fully examine the proposed transaction in light of relevant statutes, regulations and policies.
- If the FCC does not apply Federal broadband policies in this case, no one will.
- CFC has no valid grounds for objecting to a divestiture condition.
 - To the extent there was a misappropriation of funds by ICC's prior owner, such action occurred on RTFC's watch. RTFC failed to identify the malfeasance but now wants to own ICC's assets in the hope of recovering at least some of its losses through the sale of those assets at a later date.
 - There are other potential buyers for ICC's assets, despite CFC's assertions to the contrary.
 - The required divestiture of Innovative Cable (or Vitelco) is a transaction-specific condition – the ICC bankruptcy effectively ended the common ownership of the ICC assets. From that moment forward, the Trustee was free to sell them individually, all together, or in packages. The transaction at issue here is not merely the selection of CFC as the proposed transferee, but the packaging of the assets by the Trustee. Regardless, the FCC is not required by statute to impose only transaction-specific conditions.
 - There are always costs associated with divestiture, but that hasn't stopped the FCC from requiring divestiture in the past where the public benefits from the divestiture outweigh the private costs of divesting the company or assets.
- Which is more important?
 - Permitting RTFC to take actions designed to reduce (not eliminate) the losses it suffered from a bad investment which it failed to prudently monitor or protect? *or*
 - Establishing intermodal competition through ILEC-cable competition so that Virgin Islanders for the first time will benefit from the building of a broadband infrastructure and the introduction of true broadband services?